



FEDERAL COMMUNICATIONS COMMISSION

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Certification Adopted for Auction of Flexible-Use Service Licenses in the 3.45–3.55 Band for Next-Generation Wireless Services (Auction 110)

AGENCY: Federal Communications Commission.

ACTION: Final action; requirement and procedure.

SUMMARY: In this document, the Office of Economics and Analytics and the Wireless Telecommunications Bureau adopt a certification that will be required of each applicant to participate in the upcoming auction of flexible-use licenses in the 3.45–3.55 GHz band (Auction 110).

DATES: The Commission will publish a document in the **Federal Register** announcing the effective date of the certification requirement.

FOR FURTHER INFORMATION CONTACT: *Auction 110 Information:* Mary Lovejoy or Andrew McArdell at 202-418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 110 Certification Requirement Public Notice*, released on May 19, 2021. The complete text of the *Auction 110 Certification Requirement Public Notice*, including attachments and any related documents, is available on the Commission's website at www.fcc.gov/auction/110 or by using the search function for AU Docket No. 21-62, DA 21-567, on the Commission's Electronic Comment Filing System (ECFS) web page at www.fcc.gov/ecfs. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

1. By the *Auction 110 Certification Requirement Public Notice*, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) adopt a certification that will be required of each applicant to participate in the upcoming auction of flexible-use licenses in the 3.45–3.55 GHz band (Auction 110). Specifically, each applicant for

Auction 110 will be required to certify in its short-form application that it has read the public notice describing the procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band.

2. In the *Auction 110 Comment Public Notice*, 86 FR 18000 (April 7, 2021), released March 18, 2021, the Commission sought comment on a range of proposed procedures for conducting Auction 110, including a proposal to require each participant in Auction 110 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band. As with other certifications required to be made in an auction application, a failure to make the certification would render the application unacceptable for filing, and the application would be dismissed with prejudice.

3. The Commission proposed to establish this requirement to help ensure that each applicant has reviewed the procedures to become a qualified bidder and participate in the auction process and that it has investigated and assessed technical and business factors that may be relevant to its use of the licenses being offered. The Commission reasoned that this requirement would promote an applicant’s successful participation and would minimize its risk of auction defaults.

4. This certification is designed to bolster applicants’ efforts to educate themselves to the greatest extent possible about procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understand their obligation to stay abreast of relevant, forthcoming information. By ensuring familiarity with the Commission’s rules and procedures governing Auction 110, OEA and WTB are also taking steps to help bidders avoid the consequences to them associated with defaults, as well as the consequences for other applicants, the public, and the Commission associated therewith. This certification, along with the other certifications required pursuant to § 1.2105(a) of the Commission’s rules, helps ensure that

auction applicants are sincere about their interest in the auction, and it may discourage the filing of frivolous applications that waste Commission resources.

5. For these reasons, OEA and WTB will require each Auction 110 applicant to certify as follows in its short-form application:

that the applicant has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band.

An applicant will provide this certification under penalty of perjury, consistent with § 1.2105(a) of the Commission’s rules.

6. This action is taken by the Office of Economics and Analytics, jointly with the Wireless Telecommunications Bureau, pursuant to §§ 0.21(m) and 0.131(c) of the Commission’s rules. This requirement is an information collection that is subject to approval by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. Accordingly, this requirement will apply to applicants for Auction 110 only if it has been approved by OMB and notice of such approval has been published in the Federal Register prior to the opening of the short-form application window for Auction 110.

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 110 Comment Public Notice* released in March 2021. The Commission sought public comment on the proposals in the *Auction 110 Comment Public Notice*, including comments on the Supplemental IRFA. One comment was filed addressing the Supplemental IRFA. The *Auction 110 Certification Requirement Public Notice* establishes a certification requirement to be used for Auction 110 and supplements the Initial and Final Regulatory Flexibility Analyses completed by the Commission in the *3.1–3.55 GHz Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM)*, 85 FR 64062, October 2, 2020, and 85 FR 66888, October 21, 2020, *3.45 GHz Second Report and Order*, 86 FR 17920, April 7, 2021, and other

Commission orders pursuant to which Auction 110 will be conducted. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

8. *Need for, and Objectives of, the Rules. The Auction 110 Certification Requirement Public Notice* implements an element of the auction procedures for those entities that seek to bid to acquire licenses in Auction 110, which will be the Commission's third auction of mid-band spectrum in furtherance of the deployment of fifth-generation (5G) wireless, the Internet of things (IoT), and other advanced spectrum-based services.

9. To promote the efficient and fair administration of the competitive bidding process for all Auction 110 participants, OEA and WTB adopt a procedure requiring each Auction 110 applicant to certify that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band, consistent with the proposal made in the *Auction 110 Comment Public Notice*.

10. This requirement is an element of the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking decisions regarding the 3.45–3.55 GHz band, including the *3.45 GHz Second Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

11. *Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA.* One party—the Rural Wireless Association (RWA)—filed comments that address issues raised in the Supplemental IRFA. RWA argues that the Commission's analysis in the *Auction 110 Comment Public Notice's* Supplemental IRFA underestimates the costs that small and rural entities incur when participating in a Commission auction. RWA states that, contrary to the Commission's expectations, RWA members regularly consult attorneys, engineers, and consultants to participate in Commission auctions, incurring costs of \$100,000 on average per auction. RWA provides no support for this cost figure. Nor does RWA clarify what portion of this figure represents costs associated with applying to participate in the auction and/or whether the figure may be an aggregate amount for all of its trade association members. RWA

claims that the educational materials provided by the Commission are insufficient, as some materials are not provided until after the short-form application deadline.

12. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 110 Comment Public Notice*.

13. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term small business concern under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.

14. As noted above, Regulatory Flexibility Analyses were incorporated into the *3.1–3.55 GHz R&O and FNPRM* and the *3.45 GHz Second Report and Order*. These decisions provide the underlying authority for the procedures proposed in the *Auction 110 Comment Public Notice* and are adopted herein for Auction 110. In those regulatory flexibility analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 110 Certification Requirement Public Notice*, OEA and WTB hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *3.1–3.55 GHz R&O and FNPRM* and the *3.45 GHz Second Report and Order*.

15. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed its auction application process to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-stage auction application process, parties desiring to participate in an auction file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in an auction is based on an applicant's short-form application and certifications, as well as its upfront payment. The *Auction 110 Certification Requirement Public Notice* adds to the existing certifications that are required under the Commission's competitive bidding rules a certification that is specific to Auction 110.

16. Typically, the auction procedures informs prospective applicants that they are expected to familiarize themselves with the Commission's general competitive bidding rules, Commission decisions regarding competitive bidding procedures, application requirements, obligations of Commission licensees, and the Commission's service rules for the frequency band available in the auction, and that they must be thoroughly familiar with the procedures, terms, and conditions contained in the public notice adopting procedures for the auction. OEA and WTB therefore do not expect that the certification requirement adopted in the *Auction 110 Certification Requirement Public Notice* will increase the need for small entities to hire attorneys, engineers, consultants, or other professionals because it does not increase the level of education or due diligence beyond what was required of applicants prior to the adoption of the certification requirement, and thus it should not increase an applicant's burden in complying with the additional certification requirement. The public notice adopting the procedures for Auction 110 will be made publicly available on the Auction 110 web page, and the *3.45 GHz Second Report and Order* is already publicly available on both the Commission's main website and the Auction 110 web page. OEA and WTB believe that these materials are sufficient to ensure that Auction 110 applicants can certify truthfully that they have read the auction procedures and familiarized themselves with the relevant rules and requirements.

17. RWA does not provide evidence that outside consultants are needed to enable an entity to certify truthfully that it has read the public notice adopting the procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band. Instead, RWA claims that small entity bidders cannot make complex decisions on the future impacts of auction bidding, participation, and winning bidder compliance requirements without outside counsel. In doing so, RWA appears to conflate compliance with auction procedures (in this case, certifying that they have read the public notice adopting procedures for Auction 110 and familiarized themselves with those procedures and the service rules for the 3.45–3.55 GHz band) with the development of bidding strategies and compliance with the relevant service rules. The Commission does not believe that outside consultants of this sort are necessary for an applicant to comply with this certification requirement.

18. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

19. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many free resources the Commission provides to potential auction participants. Consistent with the past practices in prior auctions, small entities that are potential participants will have access to the public notice adopting the procedures for Auction 110 prior to the opening of the application window, and already have access to the *3.45 GHz Second Report and Order* on both the Commission's main website and the Auction 110 web page. The Commission makes this information publicly

available and easily accessible and without charge to benefit all potential Auction 110 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

20. Small entities and other auction participants may seek clarification of, or guidance regarding, the Auction 110 procedures and the service rules for the 3.45–3.55 GHz band rules prior to the Auction 110 application window. Additionally, an FCC Auctions Hotline will provide small entities one-on-one access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system.

21. The Commission also makes various databases and other sources of information, including the auctions program web pages and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction.

22. These procedures for the conduct of Auction 110 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking decisions regarding the 3.45–3.55 GHz band, including the *3.45 GHz Second Report and Order* and relevant competitive bidding decisions, and are fully consistent therewith.

23. *Report to Congress.* The Commission will send a copy of the *Auction 110 Certification Requirement Public Notice*, including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auction 110 Certification Requirement Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission

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